

Message Text

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ACTION SCI-06

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E.O. 11652: N/A

TAGS: IAEA, ENGR, TECH, YO

SUBJECT: KRSKO NUCLEAR POWER PROJECT

REF: IAEA VIENNA 1159 AND PREVIOUS

SUMMARY. MISSION HAS LEARNED FROM AGENCY THAT GOY REPS ARE COMING TO VIENNA DURING WEEK APRIL 22 FOR NEGOTIATIONS OF PROJECT AND SUPPLY AGREEMENTS WITH IAEA IN CONNECTION KRSKO NUCLEAR POWER PROJECT. AGENCY HAS INFORMALLY PASSED COPY OF DRAFT SUPPLY AGREEMENT TO MISSION WITH REQUEST FOR ANY U.S. COMMENTS PRIOR TO NEGOTIATIONS WITH YUGOSLAV REPS. TEXT OF DRAFT SUPPLY AGREEMENT FOLLOWS BELOW. ACTION REQUESTED: COMMENT ON TEXT. END SUMMARY.

1. BEGIN TEXT OF DRAFT SUPPLY AGREEMENT:

WHEREAS THE GOVERNMENT OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA (HEREINAFTER CALLED "YUGOSLAVIA"), DESIRING TO SET UP A NUCLEAR POWER PROJECT CONSISTING OF A PRESSURIZED-WATER REACTOR WITH A RATED GENERATING CAPACITY OF 632 MW(3), HAS REQUESTED THE ASSISTANCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY (HEREINAFTER CALLED THE "AGENCY") IN SECURING, AMONG OTHER THINGS,

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THE SUPPLY OF URANIUM ENRICHMENT SERVICES FOR THE

PROJECT DURING THE LIFETIME OF THE REACTOR;

WHEREAS YUGOSLAVIA DESIRES TO OBTAIN SUCH SERVICES FROM THE UNITED STATES ATOMIC ENERGY COMMISSION (HEREIN AFTER CALLED THE "COMMISSION");

WHEREAS THE COMMISSION IS WILLING TO PROVIDE SUCH SERVICES THROUGH THE AGENCY, PURSUANT TO THE AGREEMENT FOR CO-OPERATION BETWEEN THE AGENCY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA AS AMENDED (HEREINAFTER CALLED THE "CO-OPERATION AGREEMENT"), AND UNDER THE TERMS AND CONDITIONS PARTICULARLY SET FORTH IN A LONG-TERM, FIXED-COMMITMENT CONTRACT TO BE CONCLUDED BETWEEN THE COMMISSION AND BEGIN BRACKET NAMES OF YUGOSLAV UTILITIES TO BE INSERTED BY GOY END BRACKET (HEREINAFTER CALLED THE "LONG-TERM CONTRACT"); AND

WHEREAS THE BOARD OF GOVERNORS OF THE AGENCY APPROVED THE PROJECT ON.....1974, AND THE AGENCY AND YUGOSLAVIA ARE THIS DAY CONCLUDING AN AGREEMENT FOR THE PROVISION BY THE AGENCY OF THE ASSISTANCE REQUESTED BY YUGOSLAVIA (HEREINAFTER CALLED THE "PROJECT AGREEMENT");

NOW, THEREFORE, THE AGENCY, THE COMMISSION ACTING ON BEHALF OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND YUGOSLAVIA HEREBY AGREE AS FOLLOWS:

ARTICLE I

SUPPLY OF URANIUM ENRICHMENT SERVICES THROUGH LONG-TERM, FIXED-COMMITMENT CONTRACT

1. SUBJECT TO THE PROVISIONS OF THE CO-OPERATION AGREEMENT, THE COMMISSION SHALL FURNISH TO THE AGENCY FOR YUGOSLAVIA AND YUGOSLAVIA SHALL PURCHASE, DURING THE PERIOD OF THIS AGREEMENT, CERTAIN URANIUM ENRICHMENT SERVICES IN CONNECTION WITH THE OPERATION OF THE NUCLEAR POWER PLANT OF KRŠKO IN THE SOCIALIST REPUBLIC OF SLOVENIA, JOINTLY OWNED AND OPERATED BY BEGIN BRACKET LIMITED OFFICIAL USE

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NAMES OF YUGOSLAV UTILITIES TO BE INSERTED BY GOY END BRACKETS (HEREINAFTER JOINTLY CALLED THE "UTILITY GROUP").

2. THE PARTICULAR TERMS AND CONDITIONS, INCLUDING CHARGES AND ADVANCE PAYMENT, FOR THE SUPPLY OF SUCH ENRICHMENT SERVICES SHALL BE SPECIFIED IN THE LONG-TERM CONTRACT IN IMPLEMENTATION OF THIS AGREEMENT. AS PROVIDED FOR

THEREUNDER, THE COMMISSION THE UTILITY GROUP SHALL AGREE UPON (A) A SCHEDULE OF ENRICHMENT SERVICES SPECIFYING THE NUMBER OF UNITS OF SEPARATIVE WORK TO BE FURNISHED BY THE COMMISSION AND PURCHASED BY THE UTILITY GROUP FOR DELIVERY DURING AN INITIAL FIRM PERIOD BEGINNING IN 1977 AND ENDING IN 1987; AND (B) PROCEDURES FOR REACHING AGREEMENT UPON A MATERIAL SCHEDULE SPECIFYING THE QUANTITIES (KGU), ASSAYS (WEIGHT PER CENT 235 U) AND TIMES OF DELIVERIES OF MATERIAL OTHER THAN NATURAL URANIUM PROPOSED TO BE DELIVERED BY THE UTILITY GROUP, AND OF ENRICHED URANIUM PROPOSED TO BE DELIVERED BY THE COMMISSION UPON PERFORMANCE OF THE ENRICHMENT SERVICES FOR THE INITIAL FIRM PERIOD AND THEREAFTER.

ARTICLE II

PAYMENT

1. THE UTILITY GROUP SHALL PAY THE COMMISSION ALL CHARGES FOR ENRICHMENT SERVICES PROVIDED HEREUNDER, INCLUDING OTHER CHARGES CONNECTED THEREWITH AND ADVANCE PAYMENT THEREFOR, IN ACCORDANCE WITH THE PROVISIONS OF THE LONG-TERM CONTRACT.

2. IT IS RECOGNIZED THAT IN EXTENDING ITS ASSISTANCE FOR THE PROJECT THE AGENCY IS NOT HEREUNDER PROVIDING ANY GUARANTEES OR ASSUMING ANY FINANCIAL RESPONSIBILITY IN CONNECTION WITH THE SUPPLY OF ENRICHMENT SERVICES BY THE COMMISSION TO YUGOSLAVIA.

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ARTICLE III

DELIVERY - TITLE

1. (A) ALL MATERIAL DELIVERED BY THE COMMISSION TO THE UTILITY GROUP PURSUANT TO THE LONG-TERM CONTRACT WILL BE DELIVERED, F.O.B. COMMERCIAL CONVEYANCE, AT THE COMMISSION FACILITY FROM WHICH SUCH MATERIAL IS TO BE FURNISHED, IN ACCORDANCE WITH THE LONG-TERM CONTRACT. TITLE TO SUCH MATERIAL SHALL PASS TO YUGOSLAVIA UPON SUCH DELIVERY.

(B) ALL ARRANGEMENTS FOR THE EXPORT FROM THE UNITED STATES OF AMERICA OF MATERIAL DELIVERED BY THE COMMISSION TO THE UTILITY GROUP SHALL BE THE RESPONSIBILITY OF THE UTILITY GROUP, PROVIDED THAT THE GOVERNMENT OF THE UNITED STATES OF AMERICA SHALL TAKE ALL APPROPRIATE STEPS TO FACILITATE THE ISSUANCE OF ANY REQUIRED LICENSES OR PERMITS. PRIOR TO THE EXPORT OF SUCH MATERIAL, YUGOSLAVIA SHALL NOTIFY THE AGENCY OF THE AMOUNT THEREOF AND OF THE DATE AND METHOD OF SHIPMENT. AT SUCH TIME AS THE MATERIAL LEAVES THE JURISDICTION OF THE UNITED STATES OF AMERICA, TITLE THERETO SHALL PASS

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FROM YUGOSLAVIA TO THE AGENCY AND SHALL THEREAFTER IMMEDIATELY AND INSTANTANEOUSLY PASS BACK TO YUGOSLAVIA.

2. ALL MATERIAL DELIVERED OR RETURNED TO THE COMMISSION HEREUNDER AND PURSUANT TO THE PROVISIONS OF THE LONG-TERM CONTRACT SHALL BE DELIVERED TO THE COMMISSION, AT THE COMMISSION FACILITY OR FACILITIES TO BE DESIGNATED BY THE COMMISSION IN ACCORDANCE WITH THE LONG-TERM CONTRACT. TITLE TO SUCH MATERIAL SHALL PASS TO THE COMMISSION UPON DELIVERY AT SUCH FACILITY OR FACILITIES.

ARTICLE IV

RESPONSIBILITY

1. NEITHER THE UNITED STATES, NOR THE COMMISSION, NOR ANY PERSON ACTING ON BEHALF OF THE COMMISSION SHALL

BEAR ANY RESPONSIBILITY FOR THE SAFE HANDLING AND USE
OF THE MATERIAL DELIVERED PURSUANT TO SECTION 1 OF
ARTICLE III.

2. NEITHER THE AGENCY NOR ANY PERSON ACTING ON ITS
BEHALF SHALL AT ANY TIME BEAR ANY RESPONSIBILITIES
TOWARDS YUGOSLAVIA OR ANY PERSON CLAIMING THROUGH
YUGOSLAVIA FOR THE SAFE HANDLING AND THE USE OF SUCH
MATERIAL.

ARTICLE V

TERMINATION - SUSPENSION - AMENDMENT

1. IN THE EVENT OF TERMINATION OR SUSPENSION OF THE
LONG-TERM CONTRACT AS PROVIDED FOR THEREUNDER, THE
COMMISSION AND YUGOSLAVIA SHALL JOINTLY NOTIFY THE
AGENCY OF THE DATE ON WHICH SUCH TERMINATION OR
SUSPENSION IS EFFECTIVE. THIS AGREEMENT SHALL BE
TERMINATED OR SUSPENDED AS PROVIDED IN SUCH NOTICE.
IT IS AGREED BY YUGOSLAVIA AND THE AGENCY THAT ANY
SUCH TERMINATION OR SUSPENSION SHALL BE WITHOUT PREJUDICE
TO THE IMPLEMENTATION OF THE RIGHTS AND RESPONSIBILITIES
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OF THE AGENCY UNDER THE PROJECT AGREEMENT.

2. IN THE EVENT THE LONG-TERM CONTRACT IS AMENDED AS
PROVIDED FOR THEREUNDER, THE COMMISSION AND YUGOSLAVIA
SHALL, BY A WRITTEN NOTICE TO THE AGENCY, NOTIFY THE
AGENCY OF THE AMENDMENT OR AMENDMENTS. AT THE REQUEST
OF ANY PARTY TO THIS AGREEMENT, THE PARTIES SHALL
CONSULT EACH OTHER ON CORRESPONDING AMENDMENTS TO THIS
AGREEMENT AS APPROPRIATE.

ARTICLE VI

SETTLEMENT OF DISPUTES

1. IF THE PARTIES SHALL BE UNABLE TO REACH AGREEMENT
WITH RESPECT TO THE DETERMINATION OF THE QUANTITIES
AND PROPERTIES OF THE MATERIAL DELIVERED OR RETURNED
PURSUANT TO ARTICLE III WITHIN THIRTY (30) DAYS OF THE
SUBMISSION OF SUCH DETERMINATION TO THEM, ANY PARTY
MAY REQUEST THAT SUCH A DETERMINATION BE MADE BY A
LABORATORY AGREED UPON BY ALL THE PARTIES. THE LABORATORY
MAY PERFORM ANY TESTS OR ANALYSES THAT IT MAY DEEM
NECESSARY, AND ALL PARTIES AGREE TO FACILITATE ITS
WORK IN EVERY WAY. THE RESULTS OF THE DETERMINATION
BY THE LABORATORY SHALL BE CONSIDERED FINAL AND BINDING

ON ALL PARTIES. THE COSTS OF THE DETERMINATION BY THE LABORATORY SHALL BE BORNE EQUALLY BY THE PARTIES, PROVIDED THAT, IF THE DETERMINATION INSISTED ON BY ANY PARTY OR PARTIES IS CONFIRMED BY THE LABORATORY, SUCH PARTY OR PARTIES SHALL NOT BE OBLIGED TO BEAR ANY SHARE OF THE COSTS.

2. ANY OTHER DISPUTE ARISING OUT OF THE INTERPRETATION OR APPLICATION OF THIS AGREEMENT, WHICH IS NOT SETTLED BY NEGOTIATION OR AS MAY OTHERWISE BE AGREED BY THE PARTIES CONCERNED, SHALL ON THE REQUEST OF ANY PARTY BE SUBMITTED TO AN ARBITRAL TRIBUNAL COMPOSED AS FOLLOWS:

(A) IF THE DISPUTE INVOLVES ONLY TWO OF THE PARTIES TO THIS AGREEMENT, ALL THREE PARTIES AGREEING THAT THE THIRD IS NOT CONCERNED, THE TWO PARTIES

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INVOLVED SHALL EACH DESIGNATE ONE ARBITRATOR, AND THE TWO ARBITRATORS SO DESIGNATED SHALL ELECT A THIRD, WHO SHALL BE THE CHAIRMAN. IF WITHIN THIRTY (30) DAYS OF THE REQUEST FOR ARBITRATION EITHER PARTY HAS NOT DESIGNATED AN ARBITRATOR, EITHER PARTY TO THE DISPUTE MAY REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

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TO APPOINT AN ARBITRATOR. THE SAME PROCEDURE SHALL APPLY IF, WITHIN THIRTY (30) DAYS OF THE DESIGNATION OR APPOINTMENT OF THE SECOND ARBITRATOR, THE THIRD ARBITRATOR HAS NOT BEEN ELECTED, (B) IF THE DISPUTE INVOLVES ALL THREE PARTIES TO THIS AGREEMENT, EACH PARTY SHALL DESIGNATE ONE ARBITRATOR, AND THE THREE ARBITRATORS SO DESIGNATED SHALL BY UNANIMOUS DECISION ELECT A FOURTH ARBITRATOR, WHO SHALL BE THE CHAIRMAN, AND A FIFTH ARBITRATOR. IF WITHIN THIRTY (30) DAYS OF THE REQUEST FOR ARBITRATION ANY PARTY HAS NOT DESIGNATED AN ARBITRATOR, ANY PARTY MAY REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE TO APPOINT THE NECESSARY NUMBER OF ARBITRATORS. THE SAME PROCEDURE SHALL APPLY IF, WITHIN THIRTY (30) DAYS OF THE DESIGNATION OR APPOINTMENT OF THE THIRD OF THE FIRST THREE ARBITRATORS, THE CHAIRMAN OR THE FIFTH ARBITRATOR HAS NOT BEEN ELECTED. A MAJORITY OF THE MEMBERS OF THE ARBITRAL TRIBUNAL SHALL CONSTITUTE A QUORUM, AND ALL DECISIONS SHALL BE MADE BY MAJORITY VOTE. THE ARBITRAL PROCEDURE SHALL BE ESTABLISHED BY THE TRIBUNAL, WHOSE DECISIONS, INCLUDING ALL RULINGS CONCERNING ITS CONSTITUTION, PROCEDURE, JURISDICTION AND THE DIVISION OF THE EXPENSES OF ARBITRATION BETWEEN THE PARTIES, SHALL BE FINAL AND BINDING ON ALL PARTIES. THE REMUNERATION OF THE ARBITRATORS SHALL BE DETERMINED ON THE SAME BASIS AS THAT OF AD HOC JUDGES OF THE INTERNATIONAL COURT OF JUSTICE.

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ARTICLE VII

ENTRY INTO FORCE - DURATION

THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE BY OR FOR THE DIRECTOR GENERAL OF THE AGENCY AND BY THE AUTHORIZED REPRESENTATIVES OF THE COMMISSION AND YUGOSLAVIA, AND SHALL REMAIN IN FORCE FOR THE PERIOD OF THE LONG-TERM CONTRACT OR FOR A PERIOD OF THIRTY-THREE (33) YEARS, WHICHEVER IS GREATER, PROVIDED THAT THE PERIOD OF THIS AGREEMENT SHALL IN NO EVENT EXTEND BEYOND THE PERIOD DURING WHICH THE CO-OPERATION AGREEMENT IS IN FORCE.

ARTICLE VIII

AGREEMENT FOR CO-OPERATION

THIS AGREEMENT, AS WELL AS THE LONG-TERM CONTRACT, SHALL BE SUBJECT TO AN IN ACCORDANCE WITH THE CO-OPERATION AGREEMENT,

AS IT MAY BE AMENDED.

DONE IN VIENNA, ON THEDAY OF.....1974,
IN TRIPPLICATE IN THE ENGLISH LANGUAGE. END TEXT OF DRAFT SUPPLY
AGREEMENT.

2. AS FORESEEN BY MISSION, AGENCY LEGAL STAFF HAS MODIFIED FIRST TWO SENTENCES OF LAST PART OF PARA 3 OF HEALTH AND SAFETY ANNEX TO DRAFT PROJECT AGREEMENT (WHICH OTHERWISE IS NEARLY IDENTICAL TO PROJECT AGREEMENT FOR MEXICAN LAGUNA VERDE PROJECT), IN ORDER TO MEET CONCERNS EXPRESSED EARLIER BY YUGOSLAV REPS. THESE TWO SENTENCES NOW COMBINED INTO ONE AS FOLLOWS: "ON THE BASIS OF THE SAFETY REPORT SUBMITTED IN ACCORDANCE WITH THE PRECEDING PARAGRAPH AND OF ANY ADDITIONAL INFORMATION PROVIDED BY YUGOSLAVIA, THE AGENCY MAY REQUIRE FURTHER SAFETY MEASURES IN ACCORDANCE WITH PARAGRAPH 30 OF THE HEALTH AND SAFETY DOCUMENT AND YUGOSLAVIA UNDERTAKES TO ENSURE EFFECTIVE COMPLIANCE WITH SUCH ADDITIONAL MEASURES." FYI. YUGOSLAV STAFF MEMBER OF AGENCY'S DIVISION OF NUCLEAR POWER AND REACTORS, RAISIC, BELIEVES THIS LANGUAGE WILL BE ACCEPTABLE TO GOY. WE UNDERSTAND HE WILL BE DISCUSSING IT WITH YUGOSLAV AUTHORITIES CONCERNED WHILE HE IS BELGRADE ON EASTER VACATION.
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END FYI.

3. WOULD APPRECIATE AEC/DEPT COMMENTS SOONEST. PORTER

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